

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MOSES LEE KING #567540	§	
v.	§	CIVIL ACTION NO. 6:11cv2
OFFICER NEWMAN	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Moses King, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights during his confinement in the Gregg County Jail. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

King complained that an officer named Newman confiscated 82 photographs without giving him confiscation papers, indicating in a grievance that Newman “took it on her[self] to take my property and give it to other inmates.” He notes that Newman did not give him a disciplinary case or confiscation papers, and that “makes this a theft.”

After review of the pleadings, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed with prejudice as to its refiling in federal court, but without prejudice as to any claims in state court or through the administrative processes of TDCJ-CID which King may wish to pursue. The Magistrate Judge noted that the Supreme Court has held that the random and unauthorized deprivation of the property of a prisoner does not violate procedural due process if the State provides an adequate post-deprivation remedy. Hudson v. Palmer, 468 U.S. 517, 533 (1984); *see also* Jackson v. Maes, 392 Fed.Appx. 317, 2010 (5th Cir. 3282557) (applying holding in Hudson to claim that prison officials destroyed the plaintiff’s property). Because the State of Texas

provides adequate post-deprivation remedies, the Magistrate Judge concluded that King's federal civil rights lawsuit lacked merit.

King received a copy of the Magistrate Judge's Report on February 17, 2011, and filed a motion for extension of time in which to object. This motion was granted and King was given until April 8, 2011, in which to file his objections. King received a copy of the order granting the extension on March 11, 2011, but to date has filed no objections; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and documents in this case, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 7) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED as frivolous with prejudice as to its refiling in federal court, but without prejudice as to any claims in state court or through the administrative processes of TDCJ-CID which King may elect to pursue. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED. Finally, it is

ORDERED that the Clerk shall send a copy of this order to the Administrator of the Strike List for the Eastern District of Texas.

So ORDERED and SIGNED this 19th day of May, 2011.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**